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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

CHARLES DAVID LEE, JR.,

Defendant and Appellant.

E047791

(Super.Ct.No. FWV702916)

OPINION

APPEAL from the Superior Court of San Bernardino County. Steve Malone,  
Judge. Affirmed.

Matthew B. Stucky, under appointment by the Court of Appeal, for Defendant and  
Appellant.

No appearance for Plaintiff and Respondent.

## INTRODUCTION

Defendant and appellant Charles David Lee, Jr., was charged with unlawful possession of a firearm by a felon (Pen. Code, § 12021, subd. (a)(1), count 1),<sup>1</sup> possession of a deadly weapon (§ 12020, subd. (a)(1), count 2), possession of marijuana for sale (Health & Saf. Code, § 11359, count 3), and possession of heroin (Health & Saf. Code, § 11350, subd. (a) count 4). It was also alleged that he had served two prior prison terms (§ 667.5, subd. (b)). Defendant initially pled not guilty. Subsequently, he filed a motion quash the search warrant and suppress evidence, which was denied. After a series of other motions were filed and denied, defendant entered into a plea agreement and pled no contest to counts 1 and 3. He also admitted the two prior convictions. The remaining counts were dismissed. Pursuant to the plea agreement, the court sentenced defendant to a total term of three years four months in state prison.

Defendant filed a notice of appeal based on the denial of the motion to suppress. We affirm.

## FACTS AND PROCEDURAL BACKGROUND

Defendant stipulated to the factual basis when he pled guilty. The following facts are taken from the statement of probable cause (affidavit) attached to the search warrant, as well as the transcript of the preliminary report. On November 19, 2007, Officer Joseph Steers obtained a search warrant to search a residence on Vineyard Avenue in Rancho Cucamonga (the residence). In the affidavit, Steers stated that on March 22,

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<sup>1</sup> All further statutory references will be to the Penal Code unless otherwise noted.

2007, he received a “We-Tip” report stating that someone named Charlie Aragon<sup>2</sup> was selling methamphetamine to subjects in the condominium community where the residence was located. The report specifically stated that the suspected sales were occurring at the residence. The affidavit then stated that on June 15, 2007, Officer Steers was contacted by an anonymous citizen informant who saw a person by the name of Charlie selling methamphetamine. The informant saw foot traffic that led the informant to believe there were narcotics sales occurring at the residence. The informant also found a glass methamphetamine pipe near the residence. The affidavit next stated that on November 7, 2007, Officer Steers was contacted by a different anonymous citizen informant. The informant told Steers that he/she was approached by someone named Charlie, who lived at the residence. Charlie offered to sell marijuana to the informant. The informant also reportedly saw Charlie conduct what he/she believed to be a “hand to hand drug transaction” in front of the residence. The affidavit further stated that the following day, Officer Steers conducted a surveillance of the residence and within 45 minutes saw three separate individuals drive up to and enter the residence. Each individual left the residence within five to 10 minutes of entering it. Officer Steers recognized this type of foot traffic to be consistent with narcotics sales transactions. On November 14, 2007, Officer Steers approached the residence again and saw an individual matching Charlie’s description conducting what appeared to be a narcotics sales transaction. Officer Steers observed him walking through the condominium community

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<sup>2</sup> “Aragon” is the last name of defendant’s grandmother.

looking to see if he was being watched. Based on all of this information, Officer Steers believed the following felonies were being committed: possession of marijuana for sales, possession of methamphetamine for sales, and possession of methamphetamine. The court found probable cause and issued a search warrant.

On November 20, 2007, Officer Steers executed the search warrant. Officer Steers encountered defendant sitting on the back porch of the residence next to a sliding glass door leading to a bedroom. Defendant said he lived at the residence. Inside the residence, Officer Steers found a large useable quantity of marijuana, sandwich baggies, a digital scale, two glass vials containing a liquid substance, 12 syringes, and a backpack containing defendant's wallet, his identification card, a .357-caliber handgun, and a set of "metal knuckles. The parties stipulated for the purpose of the preliminary hearing that the substances seized by Officer Steers consisted of 39.90 grams of marijuana and two drops of liquid (in the vials) containing heroin and cocaine.

### DISCUSSION

Defendant appealed, and upon his request, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the case and three potential arguable issues, including: 1) whether the search warrant was supported by probable cause; 2) whether defendant was denied his right to effective assistance of counsel; and 3) whether defendant's waiver of his right to appeal was knowing, voluntary, and intelligent. Counsel has also requested this court to undertake a review of the entire record.

We offered defendant an opportunity to file a personal supplemental brief, which he has done. Defendant submitted a handwritten letter stating that the main issue on appeal is that the arresting officer who applied for the search warrant did so “using knowingly false statements and stale information in the probable cause affidavit.” He states that, “[g]iven the opportunity to cross-examine the officer about his observations and information in the affidavit . . . [he feels] very confident in [his] argument . . . .” Defendant further contends that he told his counsel about these concerns regarding the search warrant, but his counsel never attempted to address the issues. He then recounts that he chose to represent himself and filed several motions, the main one of which was “a nonstatutory motion to dismiss due to I.A.C. [ineffective assistance of counsel].” All motions were denied. Defendant states that he subsequently chose to seek representation, was appointed the same public defender he had claimed to be ineffective, and then filed a *Marsden*<sup>3</sup> motion, which was denied. Finally, defendant requests that this court “[take] into account” certain documents when reviewing his case on appeal, including the motions he filed, the reporter’s transcript of the *Marsden* hearing, and the probable cause statement that was used to obtain the search warrant.

Defendant specifically argues that the arresting officer who applied for the search warrant did so “using knowingly false statements and stale information in the probable cause affidavit.” He adds that his counsel below failed to address these concerns. Contrary to defendant’s claim, his counsel filed a motion to quash the search warrant and

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<sup>3</sup> *People v. Marsden* (1970) 2 Cal.3d 118.

to suppress evidence. The motion contained the same arguments defendant is making on appeal—that the search warrant leading to his arrest lacked probable cause, the information in the statement of probable cause was stale, and the police officer executing the warrant did not have a good faith belief in its validity. The court reviewed the points and authorities submitted and found there was sufficient probable cause for the issuance of the search warrant. We agree. The main contention in the motion with regard to the lack of probable cause was that Officer Steers based his affidavit on information received from anonymous informants with whom he had had no prior dealings. “Although information given by an untested informant is not sufficient, by itself, to constitute reasonable cause for an arrest or search, such information may be sufficient if corroborated ‘in essential respects’ by other facts, sources or circumstances. [Citations.]” (*People v. Cooks* (1983) 141 Cal.App.3d 224, 293.)

Here, Officer Steers received a “We-Tip” report and a tip from an anonymous informant, both reporting that defendant was observed selling methamphetamine. In addition, another informant reported that defendant tried to sell him/her marijuana. All of this information was corroborated by Officer Steers’s subsequent personal observations of what appeared to be narcotics sales traffic at the residence. Officer Steers had received numerous hours of narcotics training and had been involved in over 100 cases dealing with narcotics sales. “[C]orroborative facts about the crimes may be sufficient to support a magistrate’s conclusion that information provided by an untested, but known, informant was reliable for issuance of a search warrant.” (*People v. Cooks, supra*, 141 Cal.App.3d at p. 295.) Moreover, “[a] magistrate is entitled to rely upon the conclusions of

experienced law enforcement officers in weighing the evidence supporting a request for a search warrant as to where evidence of crime is likely to be found. [Citation.]” (*People v. Sandlin* (1991) 230 Cal.App.3d 1310, 1315.) We further note there was no reason to think Officer Steers did not have a good faith belief in the validity of the information contained in the affidavit. The magistrate properly relied upon Officer Steers’s conclusions in finding probable cause.

Furthermore, defendant’s claim that the information in the probable cause statement was stale is meritless. Officer Steers received tips from the informants in March, June and November 2007. He received the last tip on November 7, 2007, and conducted his personal surveillance of the residence the next day. He also observed an apparent drug sales transaction at defendant’s residence on November 14, 2007. He requested the search warrant within a few days of observing the suspected narcotics sales transactions at the residence. The information was thus not stale. The magistrate could infer from this evidence that methamphetamine and marijuana were being sold and might be found at the residence. Given the totality of the circumstances, the affidavit demonstrated sufficient probable cause to search the residence. (See *People v. Sandlin*, *supra*, 230 Cal.App.3d at pp. 1313-1315.)

We have now concluded our independent review of the record and found no arguable issues.

DISPOSITION

The judgment is affirmed.

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HOLLENHORST

Acting P. J.

We concur:

MCKINSTER

J.

MILLER

J.